

**VILLAGE OF ELLICOTTVILLE
ZONING BOARD OF APPEALS
MEETING MINUTES APRIL 4, 2023**

PRESENT: Fred Musolff, Chairman
Michael Painter, Member
Harry Weissman, Membe

ALSO PRESENT: Gregory Keyser-Village Planner, Kelly Fredrickson-COE,
Rich Rinko-Assistant CEO, John Burrell-Mayor, Doug Bush-Village Board,
Caleb Hennig-MDA Consulting Engineers, Jeff & Mindy Hayes-Applicants,
Teresa Zenkovich, Bonnie Blum, Robert Blum, Joe Riethmiller,
Dan Riethmiller, Booke Szpaicher, Mike Rogers, Allison Neal,
Louise Offling, Erin Grover, Bill Coolidge, Belinda Pollock

Mr. Fred Musolff, Chairman called the meeting to order at 5:30 p.m. He presented the agenda for changes, additions or approval.

Moved by Mr. Painter to approve the agenda as presented. Seconded by Mr. Weissman. Ayes all. Carried.

The Minutes of the March 7, 2023 meeting were read.

Moved by Mr. Weissman to approve the Minutes of March 7, 2023 as read. Seconded by Mr. Painter. Ayes all. Carried.

Mr. Musolff opened the public hearing for **VZP-2022-230, 29 Elizabeth Street, Jeff & Mindy Hayes, Area Variance for an expansion of a non-conforming building.**

Mr. Hayes presented his project to add an addition to the rear of the existing non-conforming structure. He needs to raise the roof of the existing house 3 feet to accommodate the design. The proposed addition meets the dimensional requirements of the zoning.

Mr. Keyser noted that the applicant was granted a variance from the ZBA on February 7, 2023 for the expansion of a nonn-conforming building allowing the height of the existing roof to be raised 1' 4". The applicant has reconsidered his project and is now proposing to raise the height of the roof by 3 feet.

Mr. Musolff asked for questions or comments from the people attending.

Mr. Keyser stated that he did not receive any written or verbal comments in response to the public hearing notice which was published in accordance with local law.

Moved by Mr. Weissman to close the public hearing for VZP-2022-230, 29 Elizabeth Street, area variance request for the expansion of a non-conforming structure by Jeff

& Mindy Hayes. Seconded by Mr. Painter. Ayes all. Carried.

Mr. Musolff opened the public hearing for **VZP-2023-039, Village of Ellicottville, Mill Street, Area variance requests for setbacks to allow for a municipal parking lot.**

Mr. Caleb Henning of MDA Consulting Engineers, presented the site plan for the proposed municipal parking lot. The Village acquired 3 parcels that are in the VC 2, Industrial and Village Residential Districts. 127 spaces are proposed on the asphalt lot with public access from Mill Street and a pedestrian walkway to Martha Street on the north side of the driveway. A parking survey shows that parking in Village will increase by 50%. A 6 foot high "light-tight" fence will surround the property. Three lights with dark sky fixtures are proposed.

The requested variances are:

Front yard setback -required 25 feet, proposed 24.7 feet for a variance of .3 feet.

Side yard setback- required 15 feet proposed 5.7 feet for a variance of 9.3 feet.

Side yard setback-required 15 feet, proposed 10 feet for a variance of 5 feet.

Rear Yard setback required 15 feet, proposed 13.6 feet for a variance of 1.4 feet

Mr. Doug Bush of the Village Board advised that the Village Planning Board will address many of the issues during their review. Our Comprehensive Plan has always acknowledged there is a parking issue. We hope to have employees of the businesses use the lot, leaving street parking for visitors.

Mr. Musolff asked for questions or comments from the people attending.

Mr. Bill Coolidge noted that restaurants and stores are at capacity business now. The number of spaces could be reduced.

Mr. Henning advised that the lot will be for daytime parking only.

Mr. Bush noted that the police will patrol the lot.

Mr. Coolidge noted that there will be trash thrown over the fence during the Fall Festival.

A resident asked why not an entrance from Martha Street?

Mr. Henning said there's not enough room for an entrance on Martha Street.

Mr. Keyser noted that the site plan and environmental issues including noise, trash, traffic and stormwater runoff will be part of the Planning Board review of the variances are granted.

Ms. Teresa Zenkovich of 6 Martha Street and 21 Mill Street stated that the walkway is on her driveway. There will be idling vehicles and smoke and people will walk on my property. Both my properties will be impacted. Is a fence along my property line possible? Am I liable if someone falls and is hurt? There will be revelers at 2 a.m. How will you stop them? How do you monitor noise? The required setback at Martha Street is 25 feet and you will be reducing it to 15 feet.

Mr. Henning advised that the required setback in the Commercial District is 15 feet and in Village Residential it is 25 feet.

Mr. Keyser noted that the setback is based on the zone and the property is zoned Commercial.

Ms. Zenkovich asked can you put the walkway on Peter Krog's property?

Mr. Bush said no, the Village does not own it. Mr. Krog granted use for a sidewalk.

Mr. Zenkovich asked can you increase the landscaping, add trees and shrubs to beautify the lot in keeping with environmental issues? Can you minimize the impact and make it something to be proud of?

Mr. Henning advised that there will be a chance to suggest plantings. However it needs to be easy for the Department of Public Works to plow snow and maintain. The zoning requires 10% of the space be designated for snow storage. We are providing 20% space for snow storage.

Mr. Henning noted that the land is a low spot in the Village and a stormwater system will be designed to handle all drainage from the lot and surrounding areas.

Ms. Zenkovich asked will there be a gate system?

Mr. Bush said no, but there will be cameras connected to the police department. No tailgating will be allowed.

A resident of Mill Street noted that vehicles cannot pull out onto Route 219 from Mill Street now. Additional traffic will make it even more congested and there is no stop sign or traffic light.

Mr. Bush acknowledged there will be an increase in traffic.

Mr. Keyser stated that the Zoning Board of Appeals has authority to grant variances. Many of the concerns expressed will be addressed as part of the Planning Board's review.

Mr. Keyser advised that he received 4 written responses to the public hearing notice which was published in accordance with local law. He read the letters for the record:

March 29, 2023 letter from Ashley Fiskus of 27 Mill Street, March 31, 2023 letter from Darlene Allen, March 31, 2023 letter from Bob Blum and April 2, 2023 letter from Barb Zenkovich of 21 Mill Street. They

Moved by Mr. Weissman to close the public hearing for VZP-2023-039, Mill Street, Village of Ellicottville, area variance requests for setbacks to allow for a municipal parking lot. Seconded by Mr. Painter. Ayes all. Carried.

Mr. Fred Musolff presented VZP-2022-210, 29 Elizabeth Street, Jeff & Mindy Hayes, area variance request to increase the height of the existing non-conforming structure for discussion.

Mr. Keyser noted that the applicant was granted a variance for the expansion of a non-conforming building to allow the height of the existing roof to be raised 1 foot 4 inches on

February 7, 2023. The applicant has reconsidered the project and is now proposing to raise the height of the roof by 3 feet.

Mr. Keyser stated that the ZBA must apply the balancing test criteria to consider the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood or community. The ZBA must also grant the minimum variance necessary. The Planning Department believes the balancing test criteria has been met and recommends that an area variance for the expansion of a non-conforming building be approved without conditions.

The Board members reviewed the 5 balancing tests, the applicants responses and the staff analysis and agreed with the findings.

Mr. Keyser advised that this application appears to meet the definition of a Type 2 action under 617.5(c)(11) involving the expansion of a single-family residence on an approved building lot. The ZBA must move to classify the project as a Type 2 Action before acting on the variance requests.

Moved by Mr. Weissman to classify the project as a Type 2 Action under Part 617.5(c)(11) of SEQR Regulations involving the expansion of a single-family residence on an approved building lot. No further review under SEQR is required. Seconded by Mr. Painter. Ayes all. Carried.

Moved by Mr. Weissman that the Zoning Board of Appeals rescind the 1 foot 4 inch height variance to a non-conforming structure granted on February 7, 2023 and grants a 3 foot variance to the height of the existing non-conforming structure at 29 Elizabeth Street as presented in application materials in VZP-2022-230 from Jeff & Mindy Hayes. Seconded by Mr. Painter. Ayes all. Carried.

Mr. Musolff presented VZP-2023-039, Mill Street, Village of Ellicottville, area variance requests to allow for the construction of a 127 car municipal parking lot for discussion.

Mr. Bush said that all concerns expressed will be addressed by the Village Board and the Planning Board as the process moves forward.

Mr. John Burrell, Mayor expressed thanks to Cattaraugus County for making it possible for the Village to own the property in order to fill a need requested for many years. He noted that former Village Board Member Ed Imhoff who lived on Rockwell Avenue was in favor of the project. It is for the overall good of the Village.

Mr. Bush noted that this is the only municipal lot in the Village.

Mr. Henning advised that they are working on minimizing the impacts to the neighbors as we transition between the districts.

Mr. Burrell stated that the variance requests are minimal and the Village Board feels it is a good project.

Mr. Weissman said that every neighborhood is impacted by the Fall Festival

Mr. Keyser stated that the application meets the definition of a Type 2 Action under 617.5(c)(16) of SEQR involving the granting of variance for setback requirements and the project is not expected to have a significant impact on the environment. The ZBA should classify the project as a Type 2 Action before acting on the variance requests.

Moved by Mr. Weissman to classify the project as a Type 2 Action under Part 617.5(c) (16) of SEQR Regulations involving the granting of variances for setback requirements. No review under SEQR is required. Seconded by Mr. Painter. Ayes all. Carried.

Mr. Keyser advised that the ZBA must apply the balancing test criteria to consider the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood or community. The ZBA must grant the minimum variance necessary. The Planning Department believes the 5 balancing tests have been met and recommends that the variances to the front, side and rear setback lines be granted.

The Zoning Board of Appeals members reviewed the 5 balancing tests criteria, the applicants responses, the staff analysis and agreed with the findings.

Mr. Painter said the Board should grant the variances requested.

Mr. Weissman noted that the setback requests are not substantial and that all the concerns expressed are for the Planning Board to address as part of the Site Plan and Special Use Permit review.

Moved by Mr. Painter that based on its review of the five balancing tests, the Zoning Board of Appeals determines the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood and community and grants the following area variances as requested in application materials submitted in VZP-2023-039 by the Village of Ellicottville for a municipal parking lot at Mill Street:

- 1. Front Yard setback (northeast corner of main parking lot)-required 25 feet, proposed 24.7 feet for a .3 foot variance.**
- 2. Side Yard setback (northwest corner of main parking lot)-required 15 feet, proposed 10 feet for a 5 foot variance.**
- 3. Side Yard setback (northwest corner of main parking lot)-required 15 feet, proposed 5.7 feet for a 9.3 foot variance.**
- 4. Rear Yard setback (western portion of main lot)-required 15 feet, proposed 13.6 feet for a 1.4 foot variance.**

Seconded by Mr. Weissman. Ayes all. Carried.

Mr. Musolff presented VZP-2023-119, 39 Martha Street, Daniel & Laura Rifkin, area variance request to allow for the expansion of the existing structure for discussion.

Mr. Caleb Henning, representing the applicants, presented the site plan and elevation drawings for the proposed 2 story addition and wrap around porch. The whole house will be 2 stories with the completion of the project.

Mr. Keyser noted the applicant is proposing to expand the existing structure by adding a 14 foot rear addition, enlarging the second story, and replacing existing porches with a new 8 foot wrap around porch. The property is located in the Village Residential District. The current structure is non-conforming building that does not meet the minimum front yard setback requirement. The proposed improvements expand a nonn-conforming building, which has the potential to affect the current non-coforming building and creates a second non-conformance by exceeding the maximum height requirement. The requested variances are:

1. Front Yard setback- required 25 feet, proposed 11.3 feet.
2. Maximum Height- required 28 feet, proposed 28.8 feet.

The applicant has provided Part 1 of the Short EAF. The project does not exceed any Type 1 thresholds and appears to meet the definition of a Type 2 Action under SEQR 617.5(c)(17) involving the granting of an area variance for a single-family residence. The ZBA must classify the project as a Type 2 Action before acting on the variance requests.

If the Board members feel they have enough information for a meaningful public review a public hearing can be set for the May meeting.

Moved by Mr. Weissman to set a public hearing for VZP-2023-119, 39 Martha Street, Daniel & Laura Rifkin, area variance application for the expansion of a non-conforming single-family residence for May 2, 2023 at 5:30 p.m. Seconded by Mr. Painter. Ayes all. Carried.

Moved by Mr. Painter to adjourn. Seconded by Mr. Weissman. Ayes all. Carried.

The meeting was adjourned at 6:40 p.m.

